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OFFICE OF PETITIONS

Patent No. 7,401,327	:	LETTER REGARDING
Issue Date: July 15, 2008	:	PATENT TERM ADJUSTMENT
Application No. 09/760,031	:	AND
Filed: January 12, 2001	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. 09612.1014-02000	:	CERTIFICATE OF CORRECTION

This letter is in response to the "NOTICE OF ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT" filed April 8, 2008. Pursuant to patentees' duty of good faith and candor to the Office, patentees disclose that the correct patent term adjustment period is three hundred ninety (390) days, not five hundred sixty-four (564) days.

The request for reconsideration of patent term adjustment indicated in the patent is **GRANTED to the extent indicated herein.**

For the reasons stated herein, the patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **one hundred ninety-eight (198)** days.

On July 15, 2008, this application matured into U.S. Patent No. 7,401,327, with a revised patent term adjustment of 564 days. Patentees give no basis for their assertion that the correct patent term adjustment is 390 days.

A review of the application history confirms that patentees are correct that the patent term adjustment of 564 indicated on the patent is incorrect. Additional periods of reduction pursuant to 37 CFR 1.704(b) and 1.704(c)(8) are warranted.

37 CFR 1.704(b) provides that:

[A]n applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

A review of the record reveals that applicants failed to engage in reasonable efforts to conclude processing or examination within the meaning of 37 CFR 1.704(b) on two occasions not recognized by the Office. First, applicants did not file a request for continued examination (RCE) in response to the final Office action mailed December 21, 2006, until June 14, 2007, three months and 85 days later. Second, applicants did not file a RCE in response to the final Office action mailed June 15, 2005, until December 15, 2005, three months and 91 days later. Thus, pursuant to 37 CFR 1.704(b), periods of reduction of 85 and 91 days are being entered for applicant delay in taking in excess of three months to reply to an Office action.

Further, 37 CFR 1.704(c)(8) provides that:

Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

A review of the record reveals that applicants failed to engage in reasonable efforts to conclude processing or examination within the meaning of 37 CFR 1.704(c)(8) on two occasions not recognized by the Office. First, a period of reduction of 11 days should have been entered for applicant delay in filing an Information Disclosure Statement (IDS) on November 18, 2003 after having filed a Request for Continued Examination (RCE) and submission on April 13, 2005. Neither IDS was expressly requested by the examiner. Neither IDS included a § 1.704(d) statement. Accordingly, pursuant to 1.704(c)(8), periods of reduction of 128 and 62 days should have been entered.

In view thereof, the patent should have issued with a revised patent term adjustment of one hundred ninety-eight (198) days 751 (681 + 70) days of Office delay - 553 (63 + **128** + **91** + 94 + **85** + **62** + 30) days of applicant delay.

As this letter was submitted as an advisement to the Office of an error in Patentees' favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **ONE HUNDRED NINETY-EIGHT (198)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,401,327 B2

DATED : July 15, 2008

DRAFT

INVENTOR(S) : Halstead, Jr. et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 564 days

Delete the phrase "by 564 days" and insert – by 198 days--